

own right, if proper words are used to show that the cause of action occurred between the persons they respectively represent.

(106) It shall not be necessary in any case to make profert in a declaration or plea, but the opposite party shall be entitled to oyer in the same manner as if profert were made.

The opposite party is only entitled to oyer in cases in which before adoption of this sub-section, profert was necessary. Oyer cannot properly be craved of a bond which is a public record, but if it is craved, the demand may be complied with by a certified copy. *State v. Wilson*, 107 Md. 131.

(107) Either party may use the common law forms or the forms hereinbefore given, at his election; and either party may require a bill of particulars where the pleading is so general as not to give sufficient notice to the opposite party of the evidence to be offered in support of it; provided that in all jurisdictions where provision has been or shall be made for the obtention of speedy judgments, when the cause of action filed with the declaration shall set forth the plaintiff's claim with the particularity required for a bill of particulars, the said cause of action shall become and be taken and treated as one of the pleadings in the case, and the plaintiff shall be restricted in his evidence to proof of the items so set out.¹

The action of trial court in refusing a demand for a bill of particulars and for extension of time to plead held prejudicial error. Distinction between incorporating an account in *narr.* and attaching an account to *narr.* Office and effect of bill of particulars. *Newbold v. Green*, 122 Md. 652 (decided prior to act of 1914, ch. 378).

Although there is no demand for bill of particulars, if suit is under practice act, the account filed with declaration takes the place of bill of particulars under this section. Common counts may be joined with special ones, though bill of particulars shows there was a special contract. *Conservation Co. v. Stimpson*, 136 Md. 319.

A bill of particulars which sets out "to money received by the defendants from the plaintiff's intestate, to wit," etc., is insufficient. Bill of particulars should be specific like an account under speedy judgment act. *Stocksdale v. Jones*, 133 Md. 179.

Where a suit is not brought under speedy judgment act, plaintiff is not restricted in his evidence by this sub-section to account filed with declaration. *Fast v. Austin*, 135 Md. 20.

Where an account filed with a *narr.* contains no item for loss of profit caused by alleged breach of contract, evidence of such lost profit is inadmissible; reversible error. *Aitz Chaim Congregation v. Butterhoff*, 141 Md. 276.

This sub-section is but expression of previous practice. When bill of particulars is properly demandable. *Black v. Woodrow*, 39 Md. 212.

This sub-section does not require that bill of particulars disclose plaintiff's witnesses. Office and effect of bill of particulars. *Cairnes v. Pelton*, 103 Md. 44.

The first clause of this sub-section referred to in deciding that the actions of debt and assumpsit could not be joined. *Smith v. State*, 66 Md. 219.

(108) Whenever the partnership of any parties, or the incorporation of any alleged corporation, or the execution of any written instrument filed in the case is alleged in the pleadings in any action or matter at law, the same shall be taken as admitted for the purpose of said action or matter, unless the same shall be denied by the next succeeding pleading of the opposite party or parties.

While under this section the fact that defendants are partners may be admitted, such admission does not carry with it the further admission that suit was on a partnership transaction or that what one partner did in reference to it necessarily bound the other. *Tippett v. Meyers*, 127 Md. 531.

¹ Thus amended by the act of 1914, ch. 378.